IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.383 OF 2005
IN
CHAMBER SUMMONS NO.1157 OF 2003
IN
SUIT NO.4847 OF 1995

Feroze Homi Duggan — Appellant
vs.
Benzer Interior Pvt. Ltd. & ors. — Respondents

Mr.H.J.Thakkar with Mr.Vivek Menon and Mr.J.S.Solomon i/b. M/s.Solomon & Co. for the appellant.

Mr.Ajit Anekar i/b. M/s.Paras Kuhad & Co. for the respondent no.1.

Mr.R.C.Tolat i/b. M/s.L.C.Tolat & Co. for the respondent no.7.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 20th June 2005

P.C.

Heard.

2. Admit.

3. In view of the short controversy involved, we dispose of this appeal at this stage itself.

4. During the course of hearing Mr.H.J.Thakkar, the learned senior counsel for the appellant submitted that on 8th February 2005 the plaintiffs have already produced and filed before the Prothonotary & Senior

Master of this Court the copies of three tapes of recorded conversations referred to in para 68 of the plaint alongwith

(a) Transcription of conversations recorded on Tape-1 on 19th June, 1994, 20th June 1994, 22nd June 1994 and 24th June 1994 containing pages 1 to 50 verified by the plaintiff before a Notary in London on 30th November 1995.

(b) Transcription of conversations recorded on Tape-2 on 24th June 1994, 28th June 1994, 29th June 1994, 3rd July 1994 and 15th July 1994 containing pages 1 to 52 verified by the plaintiff before a Notary in London on 30th November 1995 and

(c) Transcription of conversions recorded on Tape-3 around third week of August 1994, 19th September 1994, 13th January 1995, 15th January 1995, 17th January 1995, 19th January 1995 and 28th January 1995 containing pages 1 to 57 verified by the plaintiff before a Notary in London on 30th November 1995.

5. The learned senior counsel submitted that the direction given by the learned Chamber Judge for

depositing the original Tapes containing recorded conversions which has been relied upon in paragraph 68 of the plaint needs to be modified.

6. The learned counsel for the respondent no.1(original defendant no.1) would submit that in paragraph 68 of the plaint the plaintiff averred that they would put the three tapes as also the transcript in a sealed cover and deposit the same with this Court for their safe custody, preservation, protection and for use at appropriate time and, therefore, the direction given by the learned Chamber Judge needs no modification.

7. It is true that the plaintiff has averred in paragraph 68 of the plaint that he has personally checked the transcripts of the tape recordings with the original tapes and verified the correctness of the said transcript. It is further averred that the plaintiff is advised to put the three tapes as also the transcript in a sealed cover and deposit the same with the Court for their safe custody and preservation. In our view, however, the plaintiff having already deposited copies of three tapes of recorded conversation which have been relied upon in paragraph 68 of the plaint and the transcription of conversations, it would be too much to insist upon the plaintiff to deposit the original tapes of conversation referred to in para 68 of the plaint.

8. The observation made by the learned Chamber Judge that the subject tapes be protected even from being tampered upon by the plaintiff as he has scientific knowledge and background was uncalled for and unnecessary and ought to have been avoided. It is the plaintiff who is seeking to place reliance on the subject tapes in support of his case. The copies thereof along with the transcriptions have already been produced before this Court. The copies thereof have been supplied to the advocate for the first defendant. In this backdrop, if any tampering in the tapes is established, that would be at the peril of plaintiff's case.

9. We, accordingly, modify the order dated 25th January 2005 and observe that the copies of three subject tapes referred to in para 68 of the plaint along with the transcription having already been produced and filed, no further order in the Chamber Summons No.1157 of 2003 is necessary.

10. Appeal is disposed of in the aforesaid terms.

11. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)